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THE PRESENT STATUS OF THE RULE IN PINNEL'S CASE
JOSEPH GOLD*

(Continued from November issue.)

EXCEPTIONS TO THE RULE IN PINNEL'S CASE

There are a number of cases in which the payment or promise of payment of a less sum may discharge a larger indebtedness although no element of consideration for the discharge can be found.

1. Compositions with creditors

A composition is an arrangement between two or more creditors with the debtor to accept part of their debts in satisfaction of the whole. It is essential that there be some conjoint action. Where a single creditor agreed with the debtor to accept a percentage of his debt, provided no other creditor received more, this was not a composition. There is no composition even if the debtor approaches several creditors and makes terms with each, if each acts on his own judgment and gets what he can. But in order to constitute a composition it is not necessary that all of the creditors, or even a majority of them, must act in concert. It is sufficient if but two of them join in the agreement.

Compositions have a long history. They were arranged and enforced by the King's Council for the benefit of deserving creditors as early as the sixteenth century. Later, the supervision of compositions was taken over by Equity. The earliest case cited by Montagu in his monograph and collection of cases published in 1823 is Child v. Danbridge decided in 1688. In most of the early equity cases the jurisdiction of the court was invoked to set aside a secret arrangement between one creditor


156 Perkins v. Lockwood (1868) 100 Mass. 249.
159 Holdsworth, History of English Law, viii, 233-234.
160 2 Vern. 71.
and the debtor by which that creditor was given an advantage not enjoyed by the other creditors.\textsuperscript{161} These cases imply that the composition was binding, otherwise it would not have been fraudulent to take the secret advantage. There is some evidence that equity would also enforce a composition, provided the debtor tendered an exact performance.\textsuperscript{162} In these early cases there was no discussion of the consideration received by the creditors for the abatement of part of their debts. Moreover, it is fairly clear from some of the cases that there was no consideration such as existed in the early cases at law. In other words, there was no consideration at all.\textsuperscript{163}

Cases at law involving compositions became common at the end of the eighteenth and the beginning of the nineteenth centuries. In those compositions recognized as binding there was usually one of two features, which were taken by the court to provide consideration for the creditors' promises. Either the debtor assigned all his property for the benefit of the creditors,\textsuperscript{164} or he procured negotiable instruments from a stranger for the purpose of paying or securing the dividends agreed upon in the composition.\textsuperscript{165} When the question arose whether a composition unsupported by such consideration was binding, courts of law at first answered that they were not. In Heathcote v. Crookshanks (1787),\textsuperscript{166} there was a composition in which the debtor promised nothing but a part payment of his debts, in return for the creditors' promise of a full discharge. In this action by a creditor for his original debt, the debtor pleaded that he had tendered performance according to the composition, but the King's Bench held this no defense. The Court treated the case as simply involving a promise to pay part of a debt, which could not be consideration for a discharge of the whole debt. In Fitch v. Sutton (1804),\textsuperscript{167} Lord Ellenborough delivered

\textsuperscript{161}Small v. Brackley (1707) 2 Vern. 602; Middleton v. Onslow (1721) 1 P. Wms. 763; Spurrett v. Spüler (1740) 1 Atk. 105.
\textsuperscript{162}Castleton v. Fanshaw (1699) Pres. in Ch. 99; Perrot v. Wells (1690) 2 Vern. 127; Ex parte Bennet (1743) 2 Atk. 526.
\textsuperscript{163}Child v. Danbridge (1688) 2 Vern. 71; Ex parte Smith (1789) 3 Bro. C.C. 1.
\textsuperscript{164}Cockshott v. Bennett (1738) 2 T.R. 763; Jackson v. Lomas (1791) 4 T.R. 166; Bigelow v. Bigelow (1854) 1 Gray 245.
\textsuperscript{165}Steinman v. Magnus (1809) 11 East 390; Bradley v. Gregory (1819) 2 Camp. 393.
\textsuperscript{166}2 T.R. 24.
\textsuperscript{167}5 East 230.
a similar opinion, although in the interim there had been a case at nisi prius decided otherwise. A composition consisting of nothing but a promise to pay the dividend and promises to accept it was binding, it was held, because on this new agreement on action will lie.

There has been much discussion of the nature of the consideration provided by a debtor who is a party to a composition under which he merely promises to pay part of his debts. At least four views have been advanced.

(a) Consideration moves from the debtor in that he procures the promises of the creditors. This may be true, but it is not necessary that the debtor should take the initiative, and quite often he does not. The composition will be binding even where the creditors first agree among themselves, and then put the proposition before the debtor.

(b) Consideration is provided by the creditors in their proportionate abatement of their debts. There are two objections to this view. The abatement need not be proportionate. If all the creditors who join in the composition agree that one of their number shall have a larger proportion, or some advantage not enjoyed by the rest, that arrangement will be binding. Furthermore, the creditors may agree to forego the whole of their debts, even though they are of varying sums.

The second objection is that even if the view is accepted that the promises of the creditors to remit part of their debts are consideration for each other, it is not possible to find any consideration in this moving from the debtor. It is quite reasonable to hold that as among the creditors there is consideration,

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[^158]: Jolly v. Wallis (1801) 3 Esp. 228. See also Cooling v. Noyes (1795) 6 T.R. 263.
[^159]: 2 B. & Ad. 328.
[^163]: Ex parte Sadler (1808) 15 Ves. 52; Pfleger v. Browne (1860) 28 Beav. 391; Montagu on Compositions with Creditors (1823) 24, Forsyth on Compositions (1841), 99.
[^164]: West Yorkshire Darracq Agency v. Coleridge (1911) 2 K.B. 326.
since by the composition each is to get something, whereas many of them might get nothing if the debtor were allowed to pick and choose among them.\textsuperscript{176} It can hardly be asserted that the debtor's surrender of this power is a detriment to him.

(c) It is sometimes said that the creditors' promises are made for the benefit of the debtor, so as to enable him to sue on them.\textsuperscript{177} This explanation will obviously not apply to English law, which has not yet reached the point where strangers to the consideration can sue upon the contract.

(d) Holdsworth\textsuperscript{178} has said that a composition really consists of two agreements—one by the creditors \textit{inter se} to accept part of their debts, and the other by the debtor to assign his property for the benefit of his creditors. There is nothing in this suggestion, since there is no need for the debtor to do anything but promise to pay the dividends.

The search for a consideration provided by the debtor in a composition agreement is a useless task. There are frequent references in the cases to a principle that creditors may not sue for their original debts after entering into a composition, because actions of this kind would be frauds on the other creditors.\textsuperscript{179} This is implied recognition of the fact that there is really no consideration moving from the debtor, and some courts have openly confessed that compositions really constitute an exception to the rule in \textit{Pinnel's Case}.\textsuperscript{180}

2 \textit{Negotiable instruments}

By the law merchant it was possible for the holder of a bill of exchange or promissory note to renounce his rights. He could do so on the receipt of part of the indebtedness, or even without receiving anything.\textsuperscript{181} This is still the law, except that certain requirements of form must now be observed.

\textsuperscript{176} Williams v. Carrington (1857) 1 Hilt. 516; Pierce, Butler & Co. v. Jones & Son (1876) 8 S.C. 273.

\textsuperscript{177} Sadler v. Jackson (1808) 15 Ves. 52, 55; Continental National Bank of Chicago v. McGeoch (1896) 92 Wis. 286, 310, 66 N.W. 606; Stewart Bros. v. Langston (1898) 103 Ga. 290, 30 S.E. 35.

\textsuperscript{178} Hist. Eng. Law, viii, 85, n. 2.

\textsuperscript{179} Greenwood v. Lidbetter (1823) 12 Price 183; Couldery v. Bartrum (1881) 19 Ch.D. 394, 400; Stewart Bros. v. Langston (1898) 103 Ga. 290, 30 S.E. 35.


\textsuperscript{181} Foster v. Dawber (1851) 6 Ex. 339.
Sec. 62 of the Bills of Exchange Act provides:

“(1) When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor the bill is discharged.

The renunciation must be in writing, unless the bill is delivered up to the acceptor.

(2) The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity; but nothing in this section shall affect the rights of a holder in due course without notice of the renunciation.”

There is a similar provision in the American Negotiable Instruments Law:

“The holder may expressly renounce his rights against any party to the instrument before, at, or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument, discharges the instrument, but a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing unless the instrument is delivered up to the person primarily liable thereon.”

It has been decided that the renunciation itself must be in writing. A mere memorandum or note of the renunciation or of an intention to renounce is not sufficient.

In one respect the statutory provisions seem to be less favorable to the discharge of liability than the common law. At common law, rescission of an executory contract may be by parol. If this were applied to bills and notes, it would follow that liability on them might be renounced by parol before maturity. The above sections, however, require writing even in this case.

It has been decided that accord and satisfaction by something other than money is not excluded or governed by these sections, so that writing would not be necessary.

It should also be noted that negotiable instruments may be purchased for less than their face value. This, it has been held, does not violate the rule in Pinnel’s Case. “They might as

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183 Re George (1890) 44 Ch. D. 627.

184 Re George (1890) 44 Ch. D. 627; Edwards v. Walters (1896) 2 Ch. 157.

properly be the subject of such a contract as any other species of personal property . . .”

3. Interest

In both England and the United States, where the debtor pays the principal sum of his debt, whether in full satisfaction or not, the creditor may later bring an action to recover interest, if he is entitled to interest by the express or implied agreement of the parties, or by statute.

Where interest is claimed as damages for the detention of the debt, the payment of the principal will amount to a satisfaction of the claim for interest. It follows that the payments of a less sum has the effect in these cases of discharging a larger debt. The reason appears to be that the claim for interest is no more than a claim for nominal damages, and almost in the nature of a vexatious proceeding.

“Nominal damages are a mere peg on which to hang costs. If a creditor were to say to his debtor, ‘You owe me £50 and a nominal sum for the detention thereof,’ and the latter were to produce £50 and tender it to the former, saying, ‘Here is the amount of the debt I owe you, and the nominal damages you claim,’ that, I conceive, would be a very good tender. Nominal damages, in fact, mean a sum of money that may be spoken of, but that has no existence in point of quantity; and I think a man may very well pay £50 in satisfaction and discharge of a debt of £50 and of the nominal damages due for its detention.”

The same idea has been expressed by Lord Atkin: “Nominal damages in respect of the non-payment of a debt are a fond thing vainly invented.”

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256 Rockwell v. Taylor (1874) 41 Conn. 55.
261 Societe etc. v. Cummings (1922) 1 K.B. 451, 464.
Evasion and Abrogation of the Rule in Pinnel's Case

As a consequence of the almost universal dislike of the rule in Pinnel's Case, there have been attempts to evade its effect by the application of other doctrines. There has also been a strong tendency to abrogate it by direct legislative or judicial action.

Evasion

(a) Executed agreements

There is much American authority to the effect that an agreement, which would be unsupported by consideration if executory, becomes binding if it is executed. If a debtor owes $50, and he agrees with his creditor to pay $10 in full satisfaction, and then pays, the creditor cannot recover the balance according to the doctrine of these cases. Vigelius v. Vigelius 192 is a recent example of this type of case. By a separation agreement the defendant agreed to pay his wife $75 a month. That agreement was later modified by another under which he was to pay only $25 a month. This action was brought by the wife on the first agreement to recover the difference between the two sums during the period in which the second agreement had been performed. The wife argued that as the first agreement was not executory on her part, the second agreement was without consideration. The Court refused to disturb the second contract insofar as it had been performed, precisely because it had been performed. 193 Many of the cases involve agreements reducing rent under leases. 194 Sympathy for the lessee's economic plight may partly explain the Court's refusal to allow recovery of the deductions. In a New Jersey case in which the Court rejected this line of authority, it was noted that it was a modern tendency in some jurisdictions to give effect to "reasonable" modifications of leases, though unsupported by consideration.

"General economic adversity, however disastrous it may be in its

192 (1932) 169 Wash. 190, 13 P. (2d) 425.
194 Robertson v. Campbell (1800) 2 Call. (Va.) 421; Doyle v. Dunn (1908) 140 Ill. App. 14; Julian v. Gold (1931) 3 P.(2d) 1009.
individual consequences, is never a warrant for judicial abrogation of this primary principle of the law of contracts.\(^{195}\)

These cases cannot be supported. The execution of the modified agreement adds nothing to the case. Consideration is necessary in the dissolution of obligations as well as in the creation.\(^{196}\) *Pinnel's Case* speaks not of executory promises to pay a less sum in satisfaction of a larger, but of the actual payment of the smaller sum in satisfaction.

The reduction of rent cases have also been supported on the ground that by the reduction of rent the lessor retains a tenant who otherwise might be unable to perform at all under the original lease.\(^{197}\) However true this may be, it does not amount to a consideration for the lessor’s promise to reduce the rent, or for acceptance of less rent in satisfaction of the rent originally reserved. There is no detriment to the lessee, and the advantage to the lessor must be something collateral to or other than the benefit he derives from the prompt payment of part of the rent.

In some of the cases holding the executed agreement cannot be disturbed, it is admitted that there is no consideration.\(^{198}\) In Idaho, it has been held, citing *Frye v. Hubbell*,\(^{199}\) that an executed agreement under which a part payment is to be accepted in satisfaction of a debt is a "well-recognized" exception to the rule in *Pinnel's Case*, if the agreement is evidenced by a written receipt.\(^{200}\) The reason given is "that after a contract has been fully executed on both sides the question of consideration becomes immaterial." In *Frye v. Hubbell*, however, no exception to the rule in *Pinnel's Case* was recognized. The rule itself was repudiated. Moreover, there is nothing in that case calling for written evidence, although that is obviously desirable in view of the nature of the transaction.

In some cases it is said that consideration originally lacking

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\(^{197}\) *Conlan v. Spokane Hardware Co.* (1921) 117 Wash. 378, 201 Pac. 26.

\(^{198}\) Julian v. Gold (1931) 3 P.(2d) 1009; *State v. American Surety Co.* (1931) 137 Ore. 394, 300 Pac. 511, 2 P.(2d) 1116.

\(^{199}\) (1907) 74 N.H. 358, 65 Atl. 325.

\(^{200}\) *Marysville Development Co. v. Hargis* (1925) 41 Idaho 257, 239 Pac. 522.
is supplied by execution. There appear to be two general ideas behind this statement. At one time some courts experienced difficulty in seeing how a contract could be concluded where there had been the offer of a unilateral contract followed by the performance called for. They found it difficult to understand how a single act could at once be an acceptance, consideration and performance. They were even more troubled by the legal character of the offer of a unilateral contract before the other party's performance. Hence it was often said that mutuality originally lacking may be supplied by performance. This statement is almost a cliché in some jurisdictions, and it is employed with the absence of thought which is the main usefulness of a cliché. While it is true that rendering the performance called for by the offer of a unilateral contract "supplies mutuality" in the sense that a contract is concluded where none existed before, there is no true analogy between that case and the execution of a concluded agreement consisting of mutual promises. The performance of an agreement of this kind does not import a consideration. If before performance there was no consideration, there will be no consideration after performance.

The other idea implicit in the cases is the exploded theory that a party to a contract has the right to refuse performance and pay damages for his breach. If he surrenders his "right" to break the old contract, and instead performs a new agreement, which happens to be more advantageous to him, he has in this way suffered a detriment. If attention is directed to his "duty" to pay damages, then the performance of the new agreement is a performance he was not bound to render, so that there is again a detriment to him or a benefit to the other. These arguments depend on an obvious fallacy.

(b) Gifts

There are a few cases in which it has been held that where a creditor accepts part of a debt in full satisfaction, there is an implied gift of the balance to the debtor. It is said in them that a gift of tangible property inter vivos is constituted by delivery with an intention to transfer title. Delivery is not possible in the case of a debt, and as "the character of the gift dictates the

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201 Bufton v. Crane, 101 Vt. 276, 280.
202 Page, Contracts (2d ed., 1920) sec. 582.

K. L. J.—5
manner of its delivery,"' the gift is completed by some such method as a receipt in full.\textsuperscript{203}

These cases have not made as much headway as those considered above,\textsuperscript{204} but the principle formulated by them must be examined more fully, if only because it has earned the approval of a learned author.\textsuperscript{205}

It is said that a distinction must be drawn between an acceptance of part of a debt in full satisfaction, and the acceptance of part as a satisfaction \textit{pro tanto} with an intention to discharge the rest. In the former case there will be no satisfaction of the whole debt; but in the latter the intention to remit the balance can take effect as a gift or assignment to the debtor, for which consideration is not necessary. The major premise is a shaky one. It is highly artificial to distinguish between the two transactions. In almost every case in which the creditor expressly accepts part of a debt in full satisfaction, he intends to abate the balance. But even if the first stage in the argument is accepted, the rest by no means follows. To call the attempted abatement of the balance an assignment to the debtor is a very unusual—one might take a plunge and say unprecedented—use of language. If, in the unlikely event that the courts would be willing to consider it possible to assign a debt to the debtor from whom it is due, it would still not be true that a method had been found for the complete evasion of \textit{Pinnel's Case}. In such jurisdictions as England, some formality, such as writing, is required for a legal assignment. If the formality is employed, consideration is not necessary. If, however, the formality is not employed, but the debtor asserts that the assignment takes effect in equity, the Court is faced with the problem whether consideration is necessary to support an equitable assignment. That problem has never been satisfactorily and completely settled, but it would


\textsuperscript{205} Ferson, \textit{The Rule in Foakes v. Beer} (1921) 31 Yale L.J. 15.
seem that if the assignment is not completed, equity will not assist a volunteer. Completion of the assignment depends on the character of the property assigned. In the case of a simple debt, a deed would be necessary.

When it is said that there may be an assignment of a debt to the debtor himself, what is really meant in accepted legal terminology is that there is a gift to him of the money he owes or a release. There could be no release at common law except under seal, except where a debt was evidenced by an instrument which was cancelled, and there could be no forgiveness of a debt without employing a deed. Equity would not depart from this common law rule in order to assist a volunteer. The only possible exception to this was where a debtor was induced to follow a course of conduct to his detriment on the representation that he would be given a release. The creditor would then be compelled to make the representation good.

Except for this last case, it is clear that a parol forgiveness of a debt was ineffective at law and in equity. Although the seal retains much of its former sanctity in England, American jurisdictions have not felt compelled to share this reverence. More than half of the states have adopted some measure modifying its common law effect. It remains to be seen how far these modifications make it possible for the Courts to recognize the parol forgiveness of debts. This study may be prefaced with one remark. Although the rule in Pinnel’s Case is everywhere treated with distaste, the courts of the jurisdictions in which these statutory changes have been adopted have been strangely reluctant to employ them to destroy the effect of the rule.

The statutory provisions take various forms:

(1) In Nebraska and Texas it is merely provided that the use of private seals is abolished. Courts have held this to mean that the consideration of all contracts may be inquired into, and further, that the payment of a less sum in satisfaction of a debt is not an effective discharge of the whole debt.

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206 Cross v. Spring (1849) 3 Hare 552; Peace v. Hains (1853) 11 Hare 151; Edwards v. Walters (1896) 2 Ch. 157; Goodeve’s Modern Law of Personal Property (1937) 239. There were dicta to the contrary by Lord Loughborough in Flower v. Marten (1937) 2 My. & Cr. 459.

207 Yeomans v. Williams (1865) 35 Beav. 130, (1865) L.R. 1 Eq. 184.

208 Richardson v. Woodruff (1886) 20 Neb. 132, 137, 29 N.W. 308;
(2) In Montana, North Dakota, South Dakota, California, Oklahoma and Arkansas it is provided that there shall be no difference between sealed and unsealed instruments. There is nothing in this statement which necessarily leads to the conclusion that a parol abatement of a debt would be binding. Prima facie, it would seem to mean, not that consideration is dispensed with where formerly it was necessary, but that consideration is necessary where formerly it could be dispensed with. On this interpretation the release or gift of a debt by deed would no longer be possible. An Arkansas court has not adopted this conclusion. It held that a direct result of the abolition of the difference between sealed and unsealed instruments was to validate an unsealed written release. It preferred to decide on this ground, although, as it pointed out, it would have found that the case it was considering came within one of the recognized exceptions to Pinnel's Case. On the other hand, a California Court decided that the effect of the statute was not to abrogate the necessity for consideration, but to make all contracts, sealed or unsealed, open to the objection of a want of consideration. It held that an incomplete voluntary gift was not binding. The only difference between this and the Arkansas case was that in the latter there was written evidence of the release.

(3) In Kentucky, there is a slightly different provision. It is enacted, not that there shall be no difference between sealed and unsealed instruments, but that they shall have the same effect. It seems unlikely that any difference in legal consequences will follow from this slight difference in terminology. It has been held that a release in writing given on the payment of part of a debt is not binding.

(4) Yet a third version, and again incorporating but a slight variation of language, are the statutes of Missouri, Iowa, Arizona, New Mexico, Ohio, Kansas, Washington and Tennessee. These provide that the use of a seal shall not affect the force or validity of an instrument. This seems a fairly clear

indication that voluntary releases are not to be binding. In some of the statutes it is further said that every contract in writing imports a consideration. This provision has been interpreted to be no more than a rule relating to the burden of proof. The absence of consideration may in all cases be proved,\(^{212}\) including those in which a receipt in full is given on the payment of part of a debt.\(^{213}\) It has been suggested by a Washington Court that the statutory abolition of the difference between sealed and unsealed instruments has abolished the rule in *Pinnel's Case.*\(^{214}\) This view has not been adopted in later Washington cases.\(^{215}\)

(5) The statutes of Indiana, Oregon and Wyoming say that sealed and unsealed instruments shall have the same force and effect, but go on to provide that "every writing not sealed shall have the same force and effect that it would have if sealed. . . An agreement in writing without a seal for the compromise or settlement of a debt is as obligatory as if a seal were affixed." Whereas the Kentucky statute says the two instruments shall have the same force and effect, but does not select one as the criterion for the other, these statutes choose the sealed instrument as the criterion. It seems reasonably clear that an unsealed release must take effect under this provision, and this interpretation is considerably strengthened by the express mention of the compromise of debts. This appears to be the view of the Indiana Courts,\(^{216}\) but not of the Oregon Courts.\(^{217}\)

The New Mexico statute declares that the addition of a seal shall add nothing to the effect of an instrument, but also pro-

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\(^{212}\) McLean *v.* Houston (1870) 49 Tenn. 37, 41, 42; Briggs *v.* Lathan (1887) 36 Kan. 205; Judy *v.* Louderman (1891) 48 Ohio St. 562; Johnson *v.* Woodmen of the World (1906) 119 Mo. App. 98, 95 S.W. 951; Brown *v.* Irving (Mo., 1923) 269 S.W. 686; People's State Bank *v.* Hunter (1924) 216 Mo. App. 334, 264 S.W. 54; Smith *v.* Ohio Millers (1932) 330 Mo. 236, 49 S.W. (2d) 42; Cahn *v.* Miller (1937) 106 S.W. (2d) 495.

\(^{213}\) Dudley *v.* Reynolds (1863) 1 Kan. 285.

\(^{214}\) Williams *v.* Blumenthal (1901) 27 Wash. 24, 67 Pac. 393. See also Oien *v.* St. Paul City Ry. Co. (1936) 198 Minn. 363, 270 N.W. 115.


\(^{216}\) First National Bank *v.* Mayr (1920) 189 Ind. 299, 127 N.E. 7.

\(^{217}\) Note (1939) 18 Oregon L. Rev. 147.
vides that an instrument formerly required to have a seal shall have the same force and effect as if it were sealed. It may be possible to give effect under this section to an unsealed release. The Mississippi statute begins by stating that all differences between sealed and unsealed instruments are abolished; but it also declares that an instrument shall be operative according to the intent of the maker as expressed in the writing, in the same manner as if a seal were affixed. There is little doubt that an unsealed release would be effective under this statute, but the question is not important, because the Mississippi courts have themselves repudiated the rule in *Pinnel's Case*. The question of the meaning of the statute will arise where the release is wholly gratuitous, that is to say, where there is not even a part payment.

(6) The Uniform Written Obligations Act, adopted by Pennsylvania in 1927, and Utah in 1929, settles the matter quite unambiguously

"A written release or promise hereafter made and signed by the person releasing or promising shall not be invalid or unenforceable for lack of consideration, if the writing also contains an additional express statement, in any form of language, that the signer intends to be legally bound."

From the above summary it can be seen that the language of the statutes modifying or abrogating the common law effect of a seal gives no strong indication that an unsealed release is to be binding. In a few statutes an intention that this should be the law is discernible without great strain on the imagination, but in most the intention appears to be quite the contrary. The courts have shown little inclination to use the statutes for preserving the effect of sealed releases at common law. On the whole, they treat the statutes as conferring power on them to inquire into the consideration of all contracts.

**ABROGATION**

The rule in *Pinnel's Case* has been repudiated by the courts or abolished by statute in a number of American and British Commonwealth jurisdictions.

**Judicial Repudiation**

(1) *Connecticut*

In Connecticut the binding force of a receipt, even though not under seal, was recognized at an early date. As was said in
one case, receipts in this state have been treated to some extent as if they were specialties. Although this doctrine has been applied to receipts for the whole debt where only part was paid, it seems that the receipt may be contradicted in order to prove that a full discharge was not intended. Where no receipt in full is given, the common law rule on the effect of part payment applies.

(2) Mississippi

In the case of Clayton v. Clark, decided in 1896, the Mississippi Supreme Court overruled earlier decisions of that state, and rejected the rule in Pinnel's Case. It doubted whether the rule had ever applied to anything but bonds, which were considered immediate gifts of the money for which the bonds were conditioned. This is not true, since there are other cases before Pinnel's Case not involving bonds. In a case of 1495 in which Brian and Fineux expressed different views on the rule, debt had been brought for the arrearages of rent under a lease for years. The Mississippi Court reverted to the view of the seventeenth century English decisions in which it was said that the creditor receives consideration in that he gets the money without the expense or the vexation of litigation. This theory is a product of the influence of debt on assumpsit. Although there may be advantage to the creditor in this, there is certainly no detriment to the debtor.

Whatever may be said in criticism of the reasoning in Clayton v. Clark, it is now clearly the law of Mississippi that a payment of part of a debt may be accepted in satisfaction of the whole debt. Moreover, if part is tendered on condition that it be in full satisfaction, and is accepted, the creditor cannot recover the balance. A written agreement to receive part in

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220 Aborn v. Rathbone (1887) 54 Conn. 444, 8 Atl. 677.
221 Warren v. Skinner (1850) 20 Conn. 559; Argall v. Cook (1875) 43 Conn. 160; Bull v. Bull (1876) 43 Conn. 455; Mitchell v. Wheaton (1878) 46 Conn. 315.
222 74 Miss. 499, 21 So. 565.
223 Y.B. 10 H.VII.4.4
224 May Bros. v. Doggett (1929) 155 Miss. 849, 124 So. 476;
225 Jones v. McFarland (1937) 178 Miss. 282, 173 So. 296.
226 Metropolitan Life Ins. Co. v. Perrin (Miss., 1938) 183 So. 917.
full satisfaction is a contract, so that it cannot be contradicted by parol evidence.\textsuperscript{225}

(3) \textit{New Hampshire}

The rule in \textit{Pinnel's Case} was followed in New Hampshire until 1907, although it was said that a written receipt in full on payment of part might be evidence that the balance had in fact been paid.\textsuperscript{227} In that year the rule was repudiated in \textit{Frye v. Hubbell},\textsuperscript{228} in a judgment in which Parsons, C. J., delivered a most learned and comprehensive attack on the doctrine. His objections, not all of which were well founded, were these:

(a) The pioneer research of Ames\textsuperscript{229} shows that as a doctrine of consideration the rule is historically unsound.

(b) It is based on the untenable assumption that money has a fixed value.

(c) It has in effect been overruled by those cases in which it is held that the debtor's own note for a less sum may constitute a consideration for the creditor's promise of a full discharge. The note may be negotiable, but no promise of money can be more valuable than cash in hand.

"Scholastic or any other variety of logic which establishes the sign to be more valuable than the thing signified, the shadow superior to the substance, the possession of an order for money more beneficial than the cash that can be obtained upon it, is the logic of unreason.

"When it is held that something whose only purpose and value lies in its capacity to secure the payment of money is a sufficient consideration for an oral discharge, the rule of \textit{Pinnel's Case} that the money itself is not such a discharge, is logically overturned. The two cannot stand together."\textsuperscript{230}

(d) The law does not measure the adequacy of consideration. The reply to this objection is that \textit{Pinnel's Case} rests, not on the inadequacy of consideration, but on the absence of consideration.

(e) If A may sell B's note for $100 to C for $50, why should he be unable to sell the debt to B for the same sum? The reply to this is that the assignment of a debt is not the same transaction as a discharge of the debt. The consideration moving from C is the payment of a sum of money he was not previously bound to pay. This is not true where B pays part of his own debt.

(f) There are cases in which part payment against the background of the debtor's insolvency constitutes consideration. These cases, however, are of doubtful correctness. The English doctrine is that the consideration must be collateral to the advantage derived from the payment of part of the money.

\begin{itemize}
  \item \textsuperscript{225}State Highway Dept. v. Duckworth (1937) 178 Miss. 35, 172
  \item \textsuperscript{227}Blanchard v. Noyes (1826) 3 N.H. 518; Page v. Brewsters (1874) 54 N.H. 184; Watson v. Elliott (1876) 57 N.H. 511.
  \item \textsuperscript{228}74 N.H. 358, 68 Atl. 325.
  \item \textsuperscript{229}Two Theories of Consideration (1899) 12 Harv. L. Rev. 515, 13 Harv.L.Rev. 29.
  \item \textsuperscript{230}P. 470.
\end{itemize}
(g) The strangest of all reasons is that payment of even part of a debt is a detriment to the debtor. The law does not as a rule compel him to pay money. At most, the debtor is compelled to suffer his property to be taken in execution. The law does not prevent the debtor from breaking his contract and paying damages. It is not necessary at this day to discuss the Holmesian Fallacy.

(4) Minnesota

In 1938 Minnesota joined the small band of states which have legislated Pinnel's Case out of existence by judicial action.

In Rye v. Phillips,231 K. had owned a note on which the plaintiff was suing. The plaintiff had approached K. and the defendant, the maker, and offered to purchase the note, turning over to K. a car which the plaintiff owned. The defendant at the same time agreed to give to the plaintiff livestock worth $250, or some livestock and cash to bring the total up to $250, and also to pay for a license for the plaintiff's car, in satisfaction of the note. The defendant performed his part, and in the action on the note, relied on this performance. The plaintiff replied that the note was for a larger sum than $250 and the amount of the license; and that there was, therefore, no consideration for his promise to accept the defendant's performance in satisfaction.

The Court recognized that it could, if it wished, find consideration on well settled principles. The defendant's promise of payment for the license was the assumption of an obligation by which he was not formerly bound. It preferred, however, not to base its decision on this ground, but on a full and complete rejection of the rule in Pinnel's Case.

"The doctrine thus invoked is one of the relics of antique law which should have been discarded long ago. It is evidence of the former capacity of lawyers and judges to make the requirement of consideration an overworked shibboleth rather than a logical and just standard of actionability."232

Statutory abrogation

In twenty common law jurisdictions the rule in Pinnel's Case has been abrogated by statute. The jurisdictions are

231. 203 Minn. 567, 282 N.W. 459.
232. P. 569.
Maine,\textsuperscript{233} Alabama,\textsuperscript{234} Tennessee,\textsuperscript{235} South Dakota,\textsuperscript{236} North Dakota,\textsuperscript{237} Montana,\textsuperscript{238} California,\textsuperscript{239} Virginia,\textsuperscript{240} North Carolina,\textsuperscript{241} Georgia,\textsuperscript{242} and New York in the United States; Alberta,\textsuperscript{243} Ontario,\textsuperscript{244} British Columbia,\textsuperscript{245} Manitoba,\textsuperscript{246} and British India\textsuperscript{247} in the British Commonwealth. In many of these jurisdictions written evidence of the promise to accept part in satisfaction of the whole is required. This is obviously a wise precaution in view of the nature of the transaction.

In its Sixth Interim Report the English Law Revision Committee recommended that an agreement to accept a lesser sum in discharge of a larger shall be deemed to have been made for valuable consideration, but that if the new agreement is not performed, the original obligation shall revive. Unfortunately, there is little likelihood that this recommendation will be translated into law. It was part of wider proposals for the reform—or, more properly, the abolition—of the whole doctrine of consideration. In some quarters the sweeping character of the proposed reform was thought objectionable. A more valid criticism is the fact that the Committee has not appreciated the full significance of its own proposals or their impact on the law as a whole, and has not made adequate provision for the problems which would necessarily arise.\textsuperscript{248} 

\textsuperscript{233}Knowlton v. Black (1907) 102 Me. 503, 67 Atl. 563; Pomeroy v. Prescott (1910) 106 Me. 401, 76 Atl. 898; Fuller v. Smith (1910) 107 Me. 161, 77 Atl. 706.
\textsuperscript{234}May v. Robinson (1931) 223 Ala. 442, 136 So. 734.
\textsuperscript{235}Tippett v. Shaw (1928) 4 Tenn. App. 132.
\textsuperscript{236}Ellens v. Lind (1937) 65 S.D. 620, 277 N.W. 40.
\textsuperscript{237}Strobeck v. Blackmore (1917) 38 N.D. 593, 165 N.W. 980.
\textsuperscript{238}Sawyers v. Somers Lumber Co. (1929) 69 Mont. 169, 282 Pac. 852.
\textsuperscript{239}Dobinson v. McDonald (1891) 92 Cal. 33, 27 Pac. 1098.
\textsuperscript{240}County of Campbell v. Howard (1922) 133 Va. 19, 112 S.E. 876.
\textsuperscript{241}Wittkowsky v. Baruch (1900) 127 N.C. 313, 37 S.E. 449.
\textsuperscript{242}Whatley v. Troutman (1939) 60 Ga. App. 23, 2 S.E. (2d) 731.
\textsuperscript{243}Goodchild v. Bethel (1914) 7 W.W.R. 832.
\textsuperscript{244}Bank of Commerce v. Jenkins (1888) 16 Ont. L.R. 215.
\textsuperscript{245}But see Bell v. Quagliotti (1918) 2 W.W.R. 915.
\textsuperscript{246}A. R. Williams Co. v. Winnipeg Storage Ltd. (1926) 4 Dom. L.R. 1167.
\textsuperscript{247}Naoroji v. Kazi Sidick (1896) 20 Bombay 636.
\textsuperscript{248}Modern Law Review (1937) i, 97.